
U.S. Department of Labor
Office of Administrative Law Judges
50 Fremont Street, Suite 2100
San Francisco, CA 94105

DATE: JANUARY 17, 1997
CASE NO. 97-ERA-6

In the Matter of

LAXMI N. KHANDELWAL,
Complainant

v.

SOUTHERN CALIFORNIA EDISON
Respondent.

RECOMMENDED ORDER GRANTING SUMMARY DECISION AND DISMISSAL OF COMPLAINT

This is a whistleblower action brought under the employee protection provisions of the Energy Reorganization Act, as amended (hereinafter "ERA" or "Act"), 42 U.S.C. §5851 *et seq*. The immediate issue for resolution is whether Southern California Edison's (SCE) motion for summary judgment should be granted, based on its contention that Complainant's knowing and voluntary execution of the Severance Agreement and Release (Agreement) in July 1995 effectively released SCE from liability for any individual causes of action Complainant may have had against it. This referenced Agreement was part of an early retirement package that SCE offered its employees, in lieu of termination, during a

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restructuring program which caused a reduction in SCE's employment force. Complainant's response is that his execution of the Agreement did not waive his right to pursue his claim of retaliation.

Procedural History

Complainant was employed as an engineer with SCE for approximately twenty-three years. He first discussed with SCE management his safety concerns regarding the proper operation of MDR and Agastat relays in May, June and September 1993. During this period, complainant stated that he was harassed by management and, in November 1993, was removed from his supervisory position. Complainant again raised safety concerns in January and June 1994. In April 1994, he was given a performance appraisal of below standard - his first below level appraisal in twenty-three years of service. He believed that his removal from his supervisory position and his subsequent poor performance appraisal were due to his identification of safety issues to SCE management. Complainant challenged his appraisal through various channels of management and, in June 1994, he contacted the Nuclear Oversight Division, Safety Concerns Group Supervisor regarding his perceived retaliation and safety and compliance issues. In July 1994, he sent an E-Mail to the Manager of Engineering regarding the Nuclear Regulatory Commission's (NRC) prohibition for retaliation for raising safety and compliance issues. Consequently, a new appraisal was given to complainant in October 1994 and the safety issues he had identified were finally addressed by SCE in August and October 1994.

In November 1994, complainant received feedback from SCE's Nuclear Safety Group regarding their investigation into his perceived retaliation by SCE. The Nuclear Safety Group found no evidence of retaliation. In response, complainant asked: (1) why his performance appraisal was noted as below standard based on false charges; (2) why management took more than one year to address his safety concerns; and (3) why an allegedly "independent" investigation was coordinated and influenced by the same individuals the Nuclear Safety Group was investigating. Complainant states that he received an unsatisfactory answer to his second question in January 1995 and

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received no answers to his first or third questions. Complainant conveyed this to management in a meeting held in February 1995.

On July 7, 1995 and July 10, 1995, complainant was contacted by management regarding whether he was volunteering for the severance and to inquire as to his feeling regarding the reduction in force because management was concerned about him due to his past actions regarding his past performance appraisal. Complainant stated that because he did not expect that management would retaliate like that, he was in a "condition of mental shock and trauma." His health was deteriorating because of "the mental anguish, financial & other worries surrounding the severance." His son, a medical doctor residing in Odessa, Texas, asked him to visit him for a change of scenery. Complainant left for Odessa on July 27, 1995, having signed the Agreement with SCE on July 26, 1995.

The Agreement and Release

The pertinent provisions of the release contained in the Agreement are set forth below. The Agreement set forth on the first page, in the first paragraph that "[y]ou and SCE (collectively referred to as the parties'), in our wish to compromise, resolve, settle, and terminate any dispute or claim between us with respect to your employment with SCE and severance therefrom, have agreed as follows..." Moreover, the fourth paragraph explicitly sets forth that

> In consideration for the payment and benefits which SCE shall provide you under this Agreement, you, on behalf of yourself, your heirs, estate, executors, administrators, successors, and assigns, release and agree to hold harmless SCE... from all actions, causes of action, claims, disputes, judgments, obligations, damages, and liabilities of whatsoever kind and character, relating to your employment with SCE, including employment severance and any action which led to the severance. Specifically, you understand and agree that the actions, causes of action, claims, disputes, judgments, obligations, damages, and liabilities covered by the preceding sentence include, but are not limited to, those arising under the Age

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> Discrimination in Employment Act and any other federal, state, or local law, regulation, or order relating to civil rights (including, but not limited to employment discrimination on the basis of race, color, religion, age, sex, national origin, disability, veteran status, marital status, and sexual orientation), wage and hour, labor, contract, or tort"

Paragraph five released SCE from all claims of every nature regarding complainant's vested benefits under SCE's Retirement Plan and Stock Savings Plus Plan.

The Agreement was given to complainant on July 11, 1995, with a return deadline of August 25, 1995, thereby giving him approximately forty-five days in which to consider the terms of the Agreement. Moreover, the Agreement explicitly encouraged the complainant to seek the advice of counsel prior to signing. Upon execution of the Agreement, the terms also provided him seven days from date of execution to revoke the Agreement. Further, in consideration for the release from any claims complainant may have against SCE, SCE paid him the sum of $69,498.72, less deductions required by law - a sum SCE was not otherwise required to pay.

The Agreement did not prohibit complainant from participating in an investigation or proceeding regarding any claim he released, where requested to do so by a state or federal agency. Complainant was also not prohibited from reporting any safety concern to the NRC or any other federal or state agency or legislature, or from participating in any investigation or proceeding regarding such a safety concern.

The Instant Claim

In August 1995, complainant contacted the NRC regarding his belief that the reduction in force and, specifically, his compelled retirement was retaliatory due to the safety concerns he identified to SCE management in 1993 and 1994. The NRC informed complainant to contact the U.S. Department of Labor regarding whistleblower protection under the ERA. Complainant then contacted the Department of Labor, Wage and Hour Division, in San Diego, California (DOL), and subsequently filed

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a complaint against SCE on September 21, 1995. On October 2, 1995, the DOL notified SCE of complainant's claim and indicated their preference that the parties reach a mutually agreeable settlement. By letter dated October 16, 1995, SCE advised the DOL that complainant and SCE had already reached a settlement when the Agreement was executed by complainant in July 1995. This Agreement released SCE from liability for any claims complainant may have against it and, in consideration for this release, SCE paid him approximately $70,000. Accordingly, SCE requested the DOL to dismiss the complaint with prejudice.

On October 23, 1995, the DOL sent a letter to SCE requesting additional information and requesting a meeting to review certain documents. This letter also stated that the fact that complainant signed SCE's Agreement "does not preclude this Agency from investigating his claim of wrongful termination" under the ERA. On December 8, 1995, SCE requested Ms. Echaveste, the Wage and Hour Division Administrator, to issue a formal policy determination that Wage and Hour would honor pre-existing releases similar to the one involved here and, therefore, dismiss the complaint. In an internal memorandum dated June 24, 1996, Ms. Geraldine Rimple, Investigator for DOL, stated that her recommendation was that the case be administratively closed with a "No Violation finding" or forwarded to the National Office of the Solicitor of Labor for closure or further action.

On August 15, 1996, Ms. Echaveste issued her determination that the DOL would uphold severance agreements containing releases if they were fair, adequate, and reasonable under the standards generally applied by the Secretary of Labor to similar agreements.

In a letter dated October 3, 1996, Ms. Burleson informed complainant of her finding that his termination was part of a planned reduction in force and he and fifty-eight other employees elected to accept SCE's severance package with early retirement. Moreover, she noted that there was no indication that complainant was coerced or under duress to accept this package. Ms. Burleson informed complainant of his rights to appeal to the Office of Administrative Law Judges if he disagreed with the DOL's findings. Accordingly, complainant timely filed

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an appeal with this office, stating that he disagreed with the DOL findings because they did not perform a "detailed investigation as they were planning earlier..." per their letter dated October 23, 1995 and the investigator "rushed to a decision without considering all of the relevant facts."

Discussion

A motion for summary decision in an ERA case is governed by 29 C.F.R. §§ 18.40 and 18.41. *See e.g. Howard v. Tennessee Valley Authority*, 90-ERA-24 (Sec'y July 3, 1991). A party opposing a motion for summary judgment "must set forth specific facts showing that there is a genuine issue of fact for the hearing. 29 C.F.R. §18.40(c). Under the analogous Fed. R. Civ. P. 56(e), the non-moving party "may not rest upon mere allegations or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial.... Instead, the party opposing the summary judgment must present affirmative evidence..." to defeat the motion. *Anderson v. Liberty Lobby*, 477 U.S. 242, 256-57 (1986).

The Agreement unambiguously states that it is the parties' intent, by execution of the Agreement, to settle and resolve any and all disputes relating to complainant's employment and severance; thus, clearly the Agreement constitutes a settlement agreement, regardless of the fact that execution of the Agreement occurred prior to complainant's filing of the instant claim.[1] The whistleblower cases consulted all contained settlement agreements executed after the complainant had filed an action. The fact that the instant Agreement was executed as part of a reduction in SCE's force, prior to complainant filing his claim is immaterial. Federal courts have routinely upheld similarly timed severance agreements containing general releases, in cases arising under various federal discrimination laws. *See generally Constant v. Continental Telephone Co.*, 745 F.Supp. 1374 (C.D. Ill. 1990); *Stroman v. West Coast Grocery Co.*, 884 F.2d 458 (9th Cir.) *cert. denied*, 498 U.S. 854 (1990).

Parties to an environmental or nuclear whistleblower case may settle their dispute at any time. 29 C.F.R. §1839(b). A settlement agreement can become effective upon signing by the parties, although the settlement must still be approved by the Secretary of Labor. 42 U.S.C. §5851(b)(2)(A); *Thompson v. U.S. Department of Labor*, 885 F.2d 551 (9th Cir. 1989). The Secretary has interpreted 29 C.F.R. Part 24 as requiring that all settlements be approved by the administrative law judge. 29 C.F.R. §24.6(a); *Hoffman v. Fuel Economy Contracting*, 87-ERA-33 (Sec'y August 10, 1988). A settlement is a contract and is subject to the rules of contract interpretation. *Macktal v. Brown & Root*, (Sec'y Nov. 14, 1989). The settlement must be fair, adequate, and reasonable and not contrary to the public interest. *Hoffman, supra*, 87-ERA-33.

The ERA contains no statutory bar to settlement agreements containing general release provisions. Moreover, in whistleblower actions, the Secretary of Labor has routinely

upheld settlement agreements which incorporate general release provisions. See for example *Bittner v. Fuel Economy Contracting Co.*, 88-ERA-22 (Sec'y June 28, 1990); *Phillips v. Citizens Association for Sound Energy*, 91-ERA-25 (Sec'y Nov. 4, 1991). Specifically, the Secretary of Labor has upheld general release clauses even where the agreement did not allude to a pending whistleblower claim against the employer. *Merritt v. Mishawaka Municipal Utilities, the City of Mishawaka*, 93-SDW-3 (Sec'y Sept. 11, 1995). The Secretary of Labor in that case found that because the language of the release was so broad and complainant was obviously aware that he could reserve a cause of action, it was a reasonable inference that complainant understood the release included the whistleblower action. *Id*.

Accordingly, the relevant inquiry here is whether this Agreement conforms to principles of contract law for enforceability. *See Macktal v. Brown & Root, Inc.*, 85-ERA-6 (Sec'y Nov. 14, 1989). Proper settlement agreements are as "binding, final and conclusive of rights as a judgment," even where a party subsequently believes the agreement is disadvantageous. *Id*. The enforceability of

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this settlement Agreement as binding depends upon finding that (1) the terms are not violative of public policy; and (2) complainant's execution of the Agreement and corresponding release was knowing and voluntary.

1. Terms of Agreement Not Violative of Public Policy

The terms of the general release provisions state that complainant, by execution of the Agreement, agreed not to bring any actions against SCE relating to his employment. Initially, I note that the general release terms provided in this Agreement encompass the settlement of matters arising under various employment laws. The Secretary's authority over settlement agreements is limited to only those statutes over which the Secretary has jurisdiction. Therefore, I limit my review of the Agreement only to the settlement terms as they pertain to the ERA. *Polizzi v. Gibbs & Hill, Inc.*, 87-ERA-38 (Sec'y July 18, 1989) (*citing Poulos v. Ambassador Fuel Oil Co., Inc.*, 86-CAA-1 (Sec'y Nov. 2, 1987)).

A second consideration is whether the general release provisions prohibit complainant from bringing prospective claims or causes of actions against SCE based on facts occurring subsequent to execution of the Agreement. I find they do not explicitly prohibit complainant from bringing any such claims. Moreover, as the Secretary has held in prior cases, such a provision as here, involving only a blanket release of any and all employment-related claims, must be interpreted as limiting only the right to file prospective charges based on facts occurring prior to execution of the agreement. *Polizzi v. Gibbs & Hill, Inc.*, 87-ERA-38 (Sec'y July 18, 1989) (*citing Johnson v. Transco Products, Inc.*, 85-ERA-7 (Sec'y Aug. 18, 1985)). *See also Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51-52 (1975). Accordingly, I interpret the general release provision

here as not prohibiting complainant from bringing any prospective claims or causes of action that are based on facts occurring subsequent to the execution of the Agreement.

It would also be violative of public policy if this general release prohibited complainant from participating in

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or assisting with the investigation by any agency charged with the responsibility of investigating claims brought under any of the environmental whistleblower protection statutes or other employee protection provisions governed by federal, state or local laws or regulations. The Agreement provides that complainant is not prohibited "from participating in an investigation or proceeding regarding such a claim if requested to do so by state or federal agency." In *EEOC v. Cosmair, Inc.*, 821 F.2d 1085 (5th Cir. 1987), the court held that waiver of the right to file a charge with EEOC was void as against public policy and distinguished between waiver of the right to file a charge and waiver of the right to recover personally on a cause of action. Here, complainant is expressly permitted to participate and assist in investigations or proceedings and may report any safety concerns to the NRC and participate in any investigations relating to those concerns. Thus the public interest is not defeated and the "channels of communication" are not left dry. Moreover, as noted herein, complainant has contacted both the NRC and the DOL in reference to the instant claim, thereby notifying these agencies of any concerns or potential unlawful activity regarding SCE operations. Therefore, the public interest is and has been protected with regard to complainant's instant claim.

2. Complainant Knowingly and Voluntarily Executed Agreement

Inherent in the requirement that the Agreement be fair, adequate, and reasonable is that complainant knowingly and voluntarily executed it. Federal courts have judicially created a "totality of circumstances" test which involves the balancing of a number of factors in determining whether execution of a contract/agreement was knowing and voluntary. *Stroman v. West Coast Grocery Co.*, 884 F.2d 458 (9th Cir. 1989). To determine the atmosphere under which the Agreement was executed, the following elements are helpful and are the same elements the court utilized in *Stroman*: (1) the clarity and unambiguous language of the agreement; (2) the plaintiff's education and business experience; (3) the amount of time complainant had access to the agreement before signing it; (4) the role of complainant in negotiating the terms; (5) whether complainant consulted counsel; and (6) whether consideration was given in exchange for the release. *See also Bormann v. AT & T Communications, Inc.*, 875 F.2d 399 (2d Cir. 1989).

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The language of the instant Agreement and corresponding release is very clear and unambiguous. It not only states in the very first paragraph of the Agreement, *supra*, that

complainant and SCE are executing the release in their desire to settle, resolve, etc. any dispute regarding his employment with SCE. Moreover, this sentiment is stated again, in more complete terms in paragraph four, stating that he, his heirs, etc., release SCE from all actions, causes of actions, claims, disputes, judgments, etc. relating to his employment and severance with SCE. This provision was followed, in the same paragraph, by a detailed, but noninclusive list of potential employment related claims that he was releasing. Thus, it is very clear that by executing the Agreement, complainant was aware that he relinquished any personal rights of recovery against SCE for any employment related claim, including an ERA cause of action. The fact that the specific employment related claim, here an ERA claim, was not specifically named is not determinative. *Stroman*, 884 F.2d at 461 (finding that the language "a full and final settlement of any and all [employment] claims" included Title VII claims then pending, because the language very clearly stated that plaintiff intended to waive all claims against employer).

Moreover, complainant's education and business experience support the clarity of the language used in the Agreement. Complainant has been an engineer with SCE for approximately twenty-years. An engineering degree is not an easy degree to obtain. Further, I am not unmindful that the previous communications from complainant to the management of SCE, which complainant lays out in his response to SCE's motion for summary judgment, indicates that he is a rational, intelligent individual. Additionally, he was a supervising engineer for a while and, when given a below-standard performance appraisal, successfully campaigned management to change it to reflect a better performance appraisal, albeit allegedly through his threats of NRC action. Moreover, his threats to management of potential NRC action indicate that he was aware of his rights if SCE took retaliatory action against him for reporting his safety concerns. Thus, viewing the unambiguous language that he was releasing all employment related claims, his education and

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business experience and his allegation prior to execution of the Agreement that his poor performance appraisal was in retaliation for his reporting safety concerns allows for only one finding - that he knowingly released any and all claims against SCE, including the instant ERA claim.

Additionally, no elements of coercion are present. Complainant had approximately forty-five days to decide whether to sign the Agreement. Paragraph ten (10) of the Agreement unambiguously stated that he was encouraged to seek the advice of counsel prior to executing it. Given the fact that he had approximately forty-five days to accept the Agreement, he certainly had ample time to consult counsel. Moreover, complainant was given an additional seven days from the date of execution to revoke the Agreement, providing him even more time to reflect on his decision and/or to consult counsel. The fact that he did not seek the advice of counsel is not as relevant a factor as is the fact that he had ample opportunity to do so. *Stroman*, 884 F.2d at 463. This is further supported by

his own ability to understand unambiguous language due to his education and business experience, as discussed above.

Another factor supporting the finding that the Agreement is enforceable is that complainant received from SCE consideration of approximately $70,000, less legally required deductions, in exchange for his release of any and all employment related claims. A sum complainant was not otherwise entitled to by contract or law and which SCE was not otherwise obliged to provide.

The fact that complainant was not involved in the negotiation of the terms is also not determinative, especially given the abovementioned factors. *Bormann*, 875 F.2d at 403, n.1. The complainant had ample time and opportunity to further discuss this Agreement with either the management of SCE or independent counsel. The fact that he chose not to was in his sole discretion. His awareness of the potential claims he had against SCE for retaliation under the ERA gave him another option and/or a possible negotiation tool. He certainly was not adverse to utilizing this tool previous to execution of the Agreement, when he successfully pursued correction of his below-standard performance appraisal.

Moreover, any contention by complainant that SCE took undue advantage of his economic duress which, he claims, was brought on by SCE's wrongful conduct, is not a meritorious argument. As the Secretary has recognized, a contention that a settlement should be overturned because it was entered into under economic duress is insufficient. *Macktal, supra*, 86-ERA-23 (*citing Asberry v. United States Postal Service*, 692, F.2d 1378 (Fed. Cir. 1982). The Secretary recognized that

> every loss of employment entails financial hardship. If that alone were sufficient to establish economic duress, no settlement involving it would ever be free from attack. In order to successfully defend on the ground of force or duress, it must be shown that the party benefited thereby constrained or forced the action of the injured party, and even threatened financial disaster is not sufficient.

Macktal, supra, citing Dupuy v. Unites States, 67 Ct. Cl. 348, 381 (1929), *cert. denied*, 281 U.S. 739 (1930). *See also Jurgensen v. Fairfax County Va.*, 745 F.2d 868 (4th Cir. 1984); *Anselmo v. Manufacturers Life Insurance Co.*, 771 F.2d 417 (8th Cir. 1985).

3. Ratification of the Agreement by Complainant Negates Any Claim of Duress

SCE contends that even if the complainant is found not to be legally bound by the Agreement, he has ratified it through his retention of the benefits, under normal contract principles. In *Constant v. Continental Telephone Co*., 745 F.Supp. 1374, 1385 (C.D. Ill. 1990), the plaintiff retained the benefits received from execution of the severance agreement and the court found that this prohibited him from later raising allegations of duress. *See also Anselmo v. Manufacturers Life Ins. Co.*, 771 F.2d 417 (8th Cir. 1985);

Blistein v. St. John's College, 74 F.3d 1459 (4th Cir. 1996); *Wamsley v. Champlin Refining & Chemicals, Inc.*, 11 F.3d 534, 539 (5th Cir. 1993) *cert. denied* 115 S.Ct. 1403 (1995).

Here, complainant has retained the benefits of

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the Agreement by keeping the cash payment, thereby ratifying the Agreement and negating any allegations of duress.

Complainant relies on the following clause, located in the Agreement, for his belief that execution of said Agreement did not waive his right to pursue his claim of retaliation:

> Nothing in this agreement, however, shall be construed to prohibit you from reporting any safety concern to the United States Nuclear Regulatory Commission or any other federal or state agency or legislature, or prohibit you from participating in any proceeding or investigation regarding such a safety concern.

However, as discussed above, the language of the Agreement clearly states it is executed for the purpose of settling any and all employment related disputes. The clause complainant relies on only states that he may report any safety concern to the NRC, it does not state that he may file a claim related to an employment related dispute. The fact the Agreement allows him to report any safety concerns to the NRC is meant to protect the public interest, an interest neither party has the authority waive. Thus, I find this argument without merit.

Complainant also states that in addition to this clause, his conversation with Mr. Dan Murphy of the NRC confirmed his belief that the "law would protect my [complainant's] interest with out litigation." Further, his discussion with Mr. Larry Benjamin of the DOL also led him to believe that the execution of the Agreement and accompanying release did not affect his rights under section 211 of the ERA. Based on the clause and the conversations with the above two agencies, complainant filed this current claim. However, these conversations occurred subsequent to his execution of the Agreement and, as such played no role in his settlement of any of his employment related claims against SCE. Further, even if the above named individuals gave complainant this information, it is erroneous, as is discussed in this order.

Complainant contends that public policy would be thwarted if a section 211 action were prohibited due to the

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execution of a release or settlement and that none of the cases cited by counsel for SEC directly addresses a section 211 action and the effect of a release on such an action. The fact that complainant knowingly and voluntarily settled his personal causes of action do not thwart public policy because the relevant agencies may still investigate any charges of wrong doing against SCE. Moreover, private settlement of such claims furthers the public interest. It is only where a settlement agreement expressly prohibits any communication between the employees of a company and the relevant agencies responsible for investigating unlawful activity that public interest is thwarted. This Agreement expressly allows complainant to participate in any investigation or proceeding where an agency requests his assistance and allows him to report any safety concerns to the NRC.

Complainant states that a company should not be able to rid itself of potential whistleblowers by economically inducing them to leave. He also contends that "[i]t is economically practical to eliminate numerous positions to remove one whistle blower who could cost the company millions..." I find this proposition unconvincing. Furthermore, any employees, like complainant, who felt they were unlawfully terminated, could have chosen of their own free will to refuse the settlement Agreement and pursue a personal cause of action, thereby furthering his negotiation power for a potentially better settlement agreement or taking a chance through the courts. Complainant's bottom-line conclusion is that his current cause of action is not prohibited by the executed Agreement and, consequently, it is erroneous that the DOL has not thoroughly investigated the retaliation issue.

Viewing these facts most favorably to complainant (the non-moving party), I find that complainant has not presented any affirmative evidence to show a genuine issue of material fact for trial. Complainant's execution of the Agreement constitutes settlement of the instant ERA claim and he has given no triable reason why this contract should be voided. Complainant executed the Agreement knowingly and voluntarily in exchange for consideration he was not otherwise entitled to, and the public interest is found not harmed by any of the provisions of the Agreement. I find the Agreement conforms to normal

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contract principles and is, therefore, inherently fair, adequate and reasonable. Accordingly, as the instant ERA cause of action has been previously settled, complainant has stated no claim upon which relief can be granted.

RECOMMENDED ORDER

1. Southern California Edison's (SCE) Motion for Summary Decision is hereby GRANTED.

2. Laxmi N. Khandelwal's (complainant) claim under the provisions of the ERA is hereby DISMISSED WITH PREJUDICE.

HENRY B. LASKY
Administrative Law Judge

Dated: January 17, 1997
San Francisco, California

HBL:mw

NOTICE: This Recommended Order and the administrative file in this matter will be forwarded for review by the Secretary of Labor to the Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The Administrative Review Board has the responsibility to advise and assist the Secretary in the preparation and issuance of final decisions in employee protection cases adjudicated under the regulations at 29 C.F.R. Parts 24 and 1978. See 55 Fed. Reg. 13250 (1990).

[ENDNOTES]

[1] I note that had complainant's cause of action been based upon SCE's conduct subsequent to execution of the Agreement, the timing of the execution of the Agreement would likely be relevant.